Hamdan bin Johan & Ors v FELCRA Bhd & Ors and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS J-01–95 OF 2010 AND J-02–399 OF 2010
LOW HOP BING, MOHD HISHAMUDIN AND LINTON ALBERT JJCA
28 JUNE 2011

Contract — Frustration — Impossibility — Appellants signed agreement with company to become settlers in development scheme on state land — Agreement held promise of right to own share in land — State government initially approved scheme — Land later repossessed by state government for international project — Whether company's agreement with settlers frustrated as a result — Impossibility of performance — Whether settlers had any right of title to land in scheme — Whether principle of legitimate expectation applied

The appellants, Hamdan bin Johan & 37 others, agreed to participate in a project to develop an oil palm plantation in Johor ('the scheme') on state land under the possession of FELCRA Bhd ('FELCRA'). As settlers, the appellants would live in the scheme area in houses provided by FELCRA. They could choose whether or not to work for FELCRA in harvesting the oil palm fruits when ready and, if they did, FELCRA would pay them for work done. The appellants signed an agreement ('the agreement') with FELCRA under which, inter alia, (i) each appellant would eventually get either a four or a six acres share in the scheme (ii) the appellants would, from income derived from sale of oil palm fruits from the scheme, pay FELCRA, over 15 years, all expenses it had incurred for the development of the scheme (iii) the appellants would pay an annual charge statutorily due to the state government and (iv) once the payments due to FELCRA and the state government as aforesaid had been made in full, FELCRA would return possession of the scheme to the state government for alienation to the appellants in a manner it deemed fit. Initially, the state government approved the scheme but it later retook possession of the land from FELCRA for use in the Malaysia-Singapore Second Link Project. FELCRA informed the appellants the repossession of the land had put an end to the scheme; that it was impossible for FELCRA to honour the agreement and that the appellants had to leave the scheme area. On compassionate grounds, the state government compensated each appellant in the sum of RM358,688.58 comprising cash and a plot of land with a house erected thereon. The appellants claimed they had a legitimate expectation to be issued with land titles in the scheme based on alleged representations made by FELCRA, the District Land Administrator of Johor Bahru and the state government and sued those three parties in the High Court. The court

dismissed the appellants' claim to a right to title in the land but held FELCRA had wrongfully repudiated the agreement and ordered it to pay RM500,000 in damages to each appellant, less the compensation they had received. The appellants and FELCRA appealed separately to the Court of Appeal against the High Court's decision.

Held, dismissing the appellants' appeal with costs and allowing FELCRA's appeal against liability and quantum with costs:

(1) The appellants failed to make out a case against the respondents based on the principle of legitimate expectation. There was no clear and unequivocal representation by the State Authority/State Government of Johor to grant titles to the appellants in respect of the land for the scheme (see paras 42–43).

(2) FELCRA was not in breach of the agreement it had made with the appellants. The Johor State Government had never alienated the land for the scheme to anyone, not even to FELCRA. It had always been state land. Without the land, the agreement became meaningless (see para 53).

(3) The State Government's act of re-taking possession of the land for the scheme frustrated the agreement. FELCRA had no choice but to surrender possession of the land to the state authority. Under s 57(2) of the Contracts Act 1950 the contract between FELCRA and the appellants was discharged by reason of impossibility of performance (see para 53).

[Bahasa Malaysia summary

Perayu-perayu Hamdan bin Johan dan 37 yang lain, telah bersetuju untuk terlibat dalam projek memajukan tapak penanaman kelapa sawit di Johor ('skim tersebut') atas tanah kerajaan negeri di bawah milikan FELCRA Bhd ('FELCRA'). Sebagai peneroka-peneroka, perayu-perayu akan menetap dalam kawasan skim itu dalam rumah-rumah yang disediakan oleh FELCRA. Mereka boleh memilih sama ada atau tidak untuk bekerja untuk FELCRA mengait hasil tanaman kelapa sawit apabila berbuah dan, jika mereka berbuat demikian, FELCRA akan membayar mereka untuk kerja yang dilakukan. Perayu-perayu telah menandatangani perjanjian ('perjanjian tersebut') dengan FELCRA di mana, antara lain: (i) setiap perayu akan akhirnya mendapat sama ada empat atau enam ekar bahagian syer dalam skim tersebut; (ii) perayu-perayu akan, daripada pendapatan hasil jualan kelapa sawit daripada skim itu, membayar FELCRA, selama 15 tahun, untuk semua perbelanjaan yang ditanggung untuk memajukan skim ini; (iii) perayu-perayu akan membayar caj tahunan statutori yang kena dibayar kepada kerajaan negeri; dan (iv) setelah bayaran yang kenea dibayar kepada FELCRA dan kerajaan negeri sebagaimana dikatakan telah dibayar sepenuhnya, FELCRA akan mengembalikan milikan skim itu kepada kerajaan negeri untuk penyerahakan

kepada perayu-perayu secara yang difikirkan sesuai. Pada mulanya, kerajaan negeri meluluskan skim itu tetapi kemudian telah mengambil semula milikan tanah tersebut daripada FELCRA untuk kegunakan dalam Projek Lingkaran Kedua Malaysia-Singapura. FELCRA telah memberitahu perayu-perayu milikan semula tanah tersebut telah menamatkan skim tersebut; bahawa adalah mustahil untuk FELCRA menepati perjanjian dan bahawa perayu-perayu hendaklah meninggalkan kawasan skim tersebut. Atas alasan simpati, kerajaan negeri telah memberi pampasan kepada setiap perayu sejumlah RM358,688.58 yang terdiri daripada wang tunai dan sebidang tanah dengan rumah yang dibina atasnya. Perayu-perayu menuntut mereka mempunyai jangkaan sah akan diberikan hakmilik tanah dalam skim itu berdasarkan representasi yang dikatakan telah dibuat oleh FELCRA, Pentadbir Tanah Daerah Johor Bahru dan kerajaan negeri dan menyaman ketiga-tiga pihak tersebut di Mahkamah Tinggi. Mahkamah telah menolak tuntutan perayu-perayu terhadap hakmilik atas tanah tersebut tetapi memutuskan FELCRA telah salah menamatkan perjanjian tersebut dan memerintahnya membayar RM500,000 untuk ganti rugi kepada setiap perayu, menolak pampasan yang mereka telah terima. Perayu-perayu dan FELCRA telah merayu berasingan ke Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi.

Diputuskan, menolak rayuan perayu-perayu dengan kos dan membenarkan rayuan FELCRA terhadap liabiliti dan kuantum dengan kos:

(1) Perayu-perayu telah gagal membuktikan kes terhadap responden-responden berdasarkan prinsip jangkaan sah. Tiada representasi yang nyata dan jelas oleh Pihak Berkuasa/Kerajaan Negeri Johor untuk memberikan hakmilik kepada perayu-perayu berkaitan tanah untuk skim tersebut (lihat perenggan 42–43).

(2) FELCRA tidak melanggar perjanjian yang dibuat dengan perayu-perayu. Kerajaan Negeri Johor tidak pernah menyerahhakkan tanah untuk skim tersebut kepada sesiapa, mahupun FELCRA. Ia sentiasa kekal sebagai tanah kerajaan negeri. Tanpa tanah tersebut, perjanjian itu menjadi tidak bermakna (lihat perenggan 53).

(3) Tindakan Kerajaan Negeri mengambil semula milikan ke atas tanah untuk skim tersebut telah membatalkan perjanjian itu. FELCRA tiada pilihan tetapi untuk menyerahkan milikan tanah tersebut kepada Kerajaan Negeri. Di bawah s 57(2) Akta Kontrak 1950 kontrak antara FELCRA dan perayu-perayu telah terbatal disebabkan mustahil untuk dilaksanakan (lihat perenggan 53).]

Notes

For cases on impossibility, see 3(3) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 4503–4511.

Cases referred to

Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 MLJ 309; [2008] 4 CLJ 538, CA (refd)

Schmidt v Secretary of State for Home Affairs [1969] 2 Ch 149, CA (refd)

Legislation referred to

Contracts Act 1950 s 57(2)

Land Acquisition Act 1960 s 5

Land (Group Settlement Areas) Act 1960 ss 4, 20, 35

Laws of the Constituition of Johore art 7(1)

National Land Code

National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966 ss 3(1), 5

National Land Rehabilitation and Consolidation Authority (Succession and Dissolution) Act 1997 s 3

Appeal from: Civil Suit Nos MT(19)22–637 of 2009 and MT(1)22–638 of 2009 (High Court, Johor Bahru).

MS Murthi (Wan Sharifah bt Wan Yusoff with him) (Wan Sharifah Jamilah & Partners) for the appellant in Civil Appeal No J-02–399 of 2010 (the first respondent in Civil Appeal No J-01–95 of 2010).

Desmond Louis (K Sasindran and JJ Naidu with him) (Nor Ding & Co) for the respondents in Civil Appeal No J-02–399 of 2010 (the appellants in Civil Appeal No J-01–95 of 2010).

Abdul Rahman Putra (Jailani A Rahman with him) (Senior Federal Counsel, State Legal Adviser) for the second and third respondents in Civil Appeal No J-01–95 of 2010).

Mohd Hishamudin JCA:

[1] These two related appeals, namely:

(a) Civil Appeal No J-01–95 of 2010 ('first appeal'); and

(b) Civil Appeal No J-02–399 of 2010 ('second appeal'),

were, by consent of the parties, heard together.

[2] These appeals emanate from the following two High Court cases, namely:

(a) Johor Bahru High Court Civil Suit No MT(1)22–637 of 2009; and

(b) Johor Bahru High Court Civil Suit No MT(1)22–638 of 2009.

[3] Before the High Court, these two cases were consolidated and heard together.

[4] In regard to the High Court case No MT(1)22–638 of 2009, only two of the plaintiffs appealed to this court, namely, the plaintiffs No 71 and No 157. The rest did not.

[5] The claim of the plaintiffs in the High Court actions were essentially for declarations and damages:

(a) for breach of agreement; and

(b) for disposition of land and deprivation of legitimate expectation to title to land.

[6] In this judgment, for purpose of convenience, we will be referring to the appellants in the first appeal, who are also the respondents in the second appeal, as 'the appellants/plaintiffs'.

[7] In relying on the principle of legitimate expectation, the appellants/plaintiffs refer to *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149, and *Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 MLJ 309; [2008] 4 CLJ 538.

THE FACTS OF THE CASE

[8] In 1994 the Federal Land Consolidation and Rehabilitation Authority ('the authority' — the predecessor of FELCRA Bhd) invited the appellants/plaintiffs to participate in a project to develop an oil palm plantation known as FELCRA Tebing Runtuh in Johor ('Tebing Runtuh Scheme').

[9] At the time when the authority made the invitation, the land allocated for the Tebing Runtuh Scheme was state land.

[10] The appellants/plaintiffs accepted the invitation and submitted their names to the authority. The authority submitted the names to the State authority of Johor.

[11] The authority is a statutory authority/corporation established under the National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966 (Revised — 1989) (Act 398) ('the Act'). It is conferred with legal personality. It may enter into contracts and may sue and be sued (see s 3(1) of the Act).

[12] Section 5 of the Act provides for the functions of the authority. It reads:

5 Functions of the Authority

(1) The functions of the Authority as regards the States of Malaysia other than the States of Sabah and Sarawak shall be to consolidate, rehabilitate or develop —

(a) either of its own motion and with the approval of the appropriate State Authority, or at the request of such State Authority, any State lands (including lands within a group settlement area): and

(b) at the request of the owner thereof, and upon such terms and conditions as may be agreed between the owner and the Authority, any land other than those specified in paragraph (a).

[13] FELCRA Bhd, that is, the first respondent in the first appeal/the appellant in the second appeal, is a company established on 23 May 1997.

[14] In 1997 Parliament passed an Act known as the National Land Rehabilitation and Consolidation Authority (Succession and Dissolution) Act 1997 that came into force on 1 September 1997. Pursuant to s 3 of this Act, the Minister for Rural Development made the National Land Rehabilitation and Consolidation Authority (Vesting Date and Dissolution) Order 1997. By para 2 of this order, the Minister appointed 1 September 1997 as the date on which all property, rights and liabilities of the the Federal Land Consolidation and Rehabilitation Authority were transferred to FELCRA Bhd, referred to in the Order as the 'successor company'. By para 3 of the order, the Minister appointed 2 September 1997 as the date of the dissolution of the the Federal Land Consolidation and Rehabilitation Authority and the repeal of the National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966.

[15] In this judgment, FELCRA Bhd (the first respondent in the first appeal/the appellant in the second appeal) shall be referred to as 'FELCRA'.

[16] By a letter dated 13 July 1994 ('exh P40') from the State Director of Lands and Mines, Johor, the Director informed the district land administrator, Johor Bahru, and the State Director of FELCRA, Johor, of the decision of 8 June 1994 of the State Executive Council, Johor. The decision was that:

(a) the State Executive Council approved the appellants'/plaintiffs' names, as submitted by FELCRA, as participants in the Tebing Runtuh Scheme; and

A (b) the State Executive Council approved FELCRA's application that each participant be allotted a share in the Tebing Runtuh Scheme that is equivalent to six acres perparticipant (or four acres per participant, as the case may be).

B **[17]** By a letter dated 4 April 1995 (exh P43) from the Secretary to the Menteri Besar of Johor to one Hj Baharom bin Abdul Ghani, the Head of the UMNO Division of Gelang Patah, the latter was informed that the Menteri Besar, in principle, agreed that the FTR land be alienated to the appellants/plaintiffs.

C

[18] On 22 July 1995 there was a meeting held between:

(a) the representatives of FELCRA;

(b) a representative of the State Government of Johor, namely, YB Puan Hjh Sabariah, a member of the State Executive Council;

D

(c) a representative of the settlers (the appellants/plaintiffs);

(d) Head of the UMNO division of Gelang Patah; and

(e) a representative of the District Land Administrator, Johor Bahru.

E

[19] According to the minutes of this meeting ('exh P44'), it was agreed that the participants/settlers of the Tebing Runtuh Scheme (that is to say the appellants/plaintiffs) be issued with titles over the land covered by the Scheme, and that the State Director of Lands and Mines, Johor, was to submit the

F proposal (that they be issued with titles) to the Johor State authority. Also, according to the minutes, every participant/settler was to sign the 'participation' agreement so as to formally signify his/her agreement to become a participant/settler of the Tebing Runtuh Scheme.

G **[20]** Subsequently, all the participants/settlers (the appellants/plaintiffs) individually signed their respective agreements with FELCRA on 2 May 1997. But the agreements took effect retrospectively, that is to say, with effect from 15 August 1994.

H **[21]** As participants, the settlers (the appellants/plaintiffs) lived in the Tebing Runtuh Scheme area. FELCRA provided them with houses. Some of them worked for FELCRA in harvesting the oil palm fruits. Others did not. For those who worked for FELCRA, the latter paid them for the works that they

I carried out.

[22] Their rights, duties and obligations are all set out in the agreements. The salient features of the agreement are as follows:

(a) FELCRA agreed to register every the appellant/plaintiff as a participant

in the Register of Holdings, each participant holding one share, such share being equivalent to six acres of land (or four acres of land, as the case may be) in the Tebing Runtuh Scheme; the registration being made under s 35 of the Land (Group Settlement Areas) Act 1960 ('the GSA') (cl 11 of the agreement);

(b) the appellants/plaintiffs agreed to pay to FELCRA all expenses incurred or advanced by FELCRA for the development of the scheme. Such payments are to be made in installments over a period of 15 years by way of deductions from the income derived from the sale of oil palm fruits from the scheme (cll 13B and 14 of the agreement);

(c) the appellants/plaintiffs also agreed to pay the annual charge under s 20 of the GSA to the State Government of Johor (cl13A of the agreement); and

(d) once the payments under cll 13A and 13B have been made in full, FELCRA will return the whole of the scheme area to the State Government for alienation to the appellants/plaintiffs, whether by way of shares in a co-operative society or by some other method to be determined by the State Government of Johor (cl 19 of the agreement).

[23] At this juncture, for the sake of completeness, we wish to say that although there are references in the 'participation' agreement to the Land (Group Settlement Areas) Act 1960, we, nevertheless, do take note of the fact that the Tebing Runtuh Scheme was never declared in the gazette as a group settlement area under s 4 of the GSA. Thus we are of the view that the provisions of the GSA are of no relevance for the purpose of this judgment.

[24] But, notwithstanding the minutes of the meeting of 22 July 1995, no decision was made by the State authority of Johor to alienate the land of the Tebing Runtuh Scheme to the appellants/plaintiffs.

[25] Instead, in 2000 the State Government of Johor decided to take back possession of the whole land of the Tebing Runtuh Scheme from FELCRA. This decision was effected in 2001. As a consequence, the Tebing Runtuh Scheme came to an end. The reason for taking back possession of the land is that the State Government of Johor needed the land for the purpose of a project known as:

> Projek Laluan Kedua Malaysia-Singapura dan Pembangunan Bandar Nusa Jaya ('the Malaysia-Singapore Second Link Project').

[26] FELCRA informed the appellants/plaintiffs by way of an information session with them of the decision of the State Government of Johor to take back possession of the land of the Tebing Runtuh Scheme. The appellants/plaintiffs

were told that as a consequence FELCRA could no longer proceed with the agreement. FELCRA, therefore, asked the appellants/plaintiffs to leave the Tebing Runtuh Scheme area.

[27] FELCRA subsequently wrote letters (dated 16 April 2001 — exh P45) to all the appellants/plaintiffs asking them to collect their compensation money from the Land Office, Johor Bahru.

[28] Each of the appellants/plaintiffs was given compensation by the Johor State Government. They were given compensation not on the basis of any legal obligation on the part of the State Government to give compensation, but on compassionate ground. The State Government took the position that it was not legally obliged to give compensation as it was not a party to the participation agreement, and moreover there was no land acquisition under the Land Acquisition Act 1960 as the land covered by the scheme had throughout remained state land.

[29] Each of the appellants/plaintiffs received a sum of RM358,688.58 as compensation. This sum is made up of:

(a) cash payment in the sum of RM173,688.58;

(b) a plot of land valued at RM135,000; and

(c) a house erected on the land valued at RM50,000.

THE HIGH COURT DECISION

[30] At the High Court, the learned High Court judge on 12 January 2010, ruled that FELCRA had breached the agreement it had made with the appellants/plaintiffs when it notified the appellants that it could no longer proceed with the agreement by reason of the fact that the State Government was taking back possession of the land. To the learned judge, it was an unlawful repudiation of the agreement on the part of FELCRA. The learned judge ordered FELCRA to pay damages in the sum of RM500,000 to each of the appellants/plaintiffs (but minus any compensation sum that had been paid to the appellants/plaintiffs).

[31] FELCRA is aggrieved by the High Court decision and is now appealing against the same; hence we have the second appeal (Civil Appeal No J-02–399 of 2010).

[32] Also at the High Court level, the learned High Court judge had ruled that there was no merit in the plaintiffs/settlers reliance on the principle of

legitimate expectation and accordingly had dismissed the plaintiffs' claim of right to title to land based on that principle. Hence, we have the plaintiffs' appeal via the first appeal (Civil Appeal No J-01–95 of 2010).

DECISION OF THIS COURT (COURT OF APPEAL)

[33] On 28 June 2011 after hearing submissions, we, unanimously, made the following decision:

(a) in respect of the first appeal (Civil Appeal No J-01–95 of 2010), we dismissed the appellants'/plaintiffs' ('Hamdan bin Johan and 37 others') appeal with costs; and

(b) in respect of the second appeal (Civil Appeal No J-02–399 of 2010), we allowed the appellant's ('FELCRA') appeal with costs.

[34] We now give our grounds.

THE PLAINTIFFS'/SETTLERS' APPEAL (CIVIL APPEAL NO J-01–95 OF 2010)

[35] As said earlier, we have unanimously dismissed this appeal. We agree with the decision of the learned High Court judge. We find no merits in the arguments raised by learned counsel for the appellants/plaintiffs.

[36] On the facts, we agree with the submission of learned counsel for the respondents that the argument based on the principle of legitimate expectation is devoid of any merit.

[37] In contending that they had a legitimate expectation to be issued with titles, the appellants/plaintiffs rely on the alleged representations and promises made by all the three respondents (that is to say, FELCRA, the District Land Administrator of Johor Bahru and the Johor State Government). It is argued that these (alleged) representations and promises are proven by documentary evidence as well as by oral evidence.

[38] The respondents on their part deny making any promises or representations. They dispute that the appellants/plaintiffs have any legitimate expectation to titles over the land. They take the position that any alienation of land could only be done in conformity with the provisions of the National Land Code ('NLC'), and not otherwise.

[39] The alleged documentary evidence are:

(a) exh P40 (letter dated 13 July 1994 from the Director of Lands and Mines, Johor);

(b) exh P43 (letter dated 4 April 1995 from the Secretary of the Menteri Besar of Johor); and

(c) exh P44, the minutes of meeting held on 22 July 1995.

[40] The oral evidence relied upon by the appellants/plaintiffs are the testimonies of:

(a) DW1 (witness for the third defendant/State Government of Johor, one Dato' Hamsan bin Saringat, the Director of the State Economic Planning Unit, Johor), at p 333, paras H–I, and at p 334, paras F–G, of the appeal record, Vol 2 (Part B);

(b) DW3 (first witness for the first defendant/FELCRA, one Norkamaludin Shah, an Assistant Public Relations Officer of FELCRA), at p 324 paras F–H of the appeal record, Vol 2 (Part B); and

(c) DW4 (second witness for the first defendant/FELCRA, one Hj Yahaya bin Yusof, the General Manager of FELCRA for Johor), at p 339 paras F–I and p 341, paras A–C, appeal record, Vol 2 (Part B).

[41] We have carefully examined the evidence but, with respect, we find nothing that supports the appellants'/plaintiffs' case.

[42] Based on the submissions and the evidence, we are not persuaded that the appellants/plaintiffs have succeeded in making out a case against the respondents based on the principle of legitimate expectation.

[43] The pertinent question is this: In the first place, is there a clear and unequivocal representation by the State authority/State Government of Johor to grant titles to the appellants/plaintiffs in respect of the land of the Tebing Runtuh Scheme? In our judgment, based on the evidence, the answer has to be in the negative.

[44] We shall begin with the letter exh P40. In our judgment, this letter is hardly of any probative value. Firstly, this letter is not pleaded in the statement of claim. Secondly, this letter, dated 13 July 1994, from the Director of Lands and Mines, Johor, was merely addressed to two persons, namely, the District Land Administrator, Johor Bahru (the second defendant in High Court Civil Suits/second respondent in the first appeal), and to the Director of FELCRA, Johor. It is not addressed to the appellants/plaintiffs. And as to its content, it merely confirms the agreement of the Johor State Executive Council to distribute the shares of landholdings of six acres (or four acres, as the case may be) to the respective appellants/plaintiffs. Therefore, this letter cannot constitute a material representation made by the State Director of Lands and Mines (or by the State Government) to the appellants/plaintiffs.

[45] As to the letter from the Secretary to the Menteri Besar of Johor, exh P43, such a letter cannot bind the state authority. Firstly, it hardly needs restating here that under the NLC only the state authority has the power to alienate land to any person or body, and not the Menteri Besar (who is only a member of the State Executive Council whose decision must be a collective decision). The 'State Authority' is defined by s 5 of the NLC to mean the Ruler of the State of Johor (meaning His Royal Highness the Sultan of Johor), and the Ruler of the State of Johor in carrying out his functions under the NLC, like any other executive function, is constitutionally obliged to act on the advice of the State Executive Council (see art 7(1) of the Constitution of the State of Johor).

[46] Secondly, alienation of land involves some legal procedures as prescribed by the provisions of Division II, Part Five, of the NLC that must be strictly adhered to. It would be a mockery of the provisions of the NLC if such a letter as exh P43 could bind the state authority; there will be legal chaos and uncertainty in the law as to alienation of land if the court were to give any legal significance to such a letter. As far as the NLC is concerned, such a letter is meaningless.

[47] Thirdly, the letter (exh P43) is only addressed to the UMNO divisional head of the constituency of Gelang Patah. It is not addressed to the appellants/plaintiffs. Thus it is only a 'political' letter addressed to a particular political leader, who is not even a party to the proceeding. Hence, the letter cannot be said to be a representation to the appellants/plaintiffs. No evidential weight, therefore, could be given to such a letter.

[48] In respect of the minutes of 22 July 1995 (exh P44), we hold that it also does not constitute a representation by the State authority/State Government to the appellants/plaintiffs to the effect that they would be issued with titles in due course. It is merely minutes of a meeting, a collective decision of those persons participating in the meeting. Those present represented varied interests (including the interests of the appellants/plaintiffs and a political party UMNO). Not all of the persons present at the meeting represented the interest of the State Government. The only person who can be said to represent the State Government is YB Puan Hjh Sabariah, a member of the State Executive Council, who chaired the meeting. But the minutes merely reflect the collective decision of the meeting, which need not necessarily be a unanimous decision: it could have been a majority decision. The minutes do not go into details so as to state the individual stand (supporting or opposing the proposal) of those present at the meeting on the issues discussed and decided at the meeting. In any case, as a matter of law, the minutes cannot legally bind the state authority; and all the more so where it is clearly recorded in the minutes that what was agreed upon at the meeting was subject to the approval of the state authority.

The minutes were, therefore, consistent with the provision of the NLC: that the power to alienate land is only vested in the state authority, and no-one else.

FELCRA'S APPEAL (CIVIL APPEAL NO J-02–399 OF 2010)

[49] This is an appeal by FELCRA against both the finding of liability and determination of quantum of damages by the learned High Court judge.

[50] The learned High Court judge found FELCRA liable for breach of the agreement; and had awarded damages of RM500,000 to each of the plaintiffs/settlers (minus the compensation sum already given).

[51] As said earlier, we have unanimously allowed FELCRA's appeal.

[52] We will deal with the issue of liability first.

[53] In our judgment, FELCRA was not in breach of the agreement that it made with each of the appellants/plaintiffs when it notified the appellants/plaintiffs of the decision of the State Government to take back possession of the land of the Tebing Runtuh Scheme and of FELCRA's inability to continue with the agreement by reason of the State Government's decision. It is our finding that there has been a frustration of the agreement brought about by the act of the State Government of Johor in taking back possession of the land from the Tebing Runtuh Scheme for the purpose of the Malaysia-Singapore Second Link Project. It is to be recalled that the Johor State Government had never alienated the land for the scheme to anyone, not even to FELCRA. The land had always been state land. But there can be no doubt that the land of the Tebing Runtuh Scheme was the substratum of the agreement. Now, without the land, the agreement had become meaningless. When the state authority made a decision to take back the land, it was an act that was beyond the control of FELCRA. There was nothing that FELCRA could do but to respect the decision of the state authority. FELCRA had no choice but to surrender the physical possession of the land to the state authority. Under the circumstances s 57(2) of the Contracts Act 1950 applies and the contract between FELCRA and the appellants/plaintiffs was discharged by reason of impossibility of performance.

[54] On the issue of quantum, we just wish to say that it is not clear to us from the grounds of judgment as to how the learned High Court judge arrived at the sum of RM500,000 to be awarded to each of the appellants/plaintiffs (minus any compensation sum already paid). In any case, as the appeal against liability is allowed, it automatically follows that the appeal against quantum must also be allowed.

[55] (Appeal of the appellants in the first appeal is dismissed with costs; appeal of the appellant in the second appeal is allowed with costs).

Appellants' appeal dismissed with costs and FELCRA's appeal against liability and quantum allowed with costs.

Reported by Ashok Kumar